

RESOLUTION NO. 88-147

BEFORE THE CITY COUNCIL OF THE CITY OF
LODI, CALIFORNIA

A RESOLUTION DETERMINING UNPAID REASSESSMENTS AND
PROVIDING FOR ISSUANCE OF REFUNDING BONDS

TURNER ROAD AND CLUFF AVENUE ASSESSMENT DISTRICT NO. 1
(REASSESSMENT AND REFUNDING OF 1988)

RESOLVED, by the City Council of the City of Lodi, California, that

WHEREAS, in proceedings heretofore undertaken pursuant to Resolution of Intention No. 81-39, adopted by this Council on April 15, 1981, under which proceedings special assessment bonds were issued designated "Improvement Bonds, Turner Road and Cluff Avenue Assessment District No. 1, City of Lodi, California, Bond Series 1981-1," dated December 23, 1981 (the "Improvement Bonds");

WHEREAS, on September 28, 1988, said Council adopted its Resolution No. 88-134, a Resolution of Intention to Levy Reassessments and to Issue Refunding Bonds upon the Security thereof, pursuant to the Refunding Act of 1984 for 1915 Act Improvement Bonds as contained in Division 11.5 of the Streets and Highways Code (commencing with § 9500) (the "Act"), and therein provided that reassessments would be levied and serial bonds would be issued thereunder pursuant to the provisions of the Act to refund the outstanding Improvement Bonds, reference to said Resolution hereby being expressly made for further particulars;

WHEREAS, the City Council has determined that the outstanding principal amount of the Improvement Bonds is the sum of \$810,000.00, that of said outstanding principal amount \$135,000 is secured by assessment installments already posted to the 1988/89 tax roll, and that it is in the best interests of the City to advance the maturity of the remaining outstanding principal amount of the Improvement Bonds in the sum of \$675,000.00 (the "Prior Bonds") by providing for reassessments and the issuance of refunding bonds to refund, in advance of maturity, the presently outstanding Prior Bonds pursuant to the Act and proceedings heretofore taken pursuant to said Resolution of Intention;

WHEREAS, the Director of Finance has filed his certificate of the accuracy of the unpaid reassessments as stated in the Engineer's Report of reassessments and the auditor's assessment register contained therein;

NOW, THEREFORE, said Council does hereby find, determine and order as follows:

1. That the reassessments in said district which now remain unpaid, and the aggregate thereof, are as shown in Exhibit A, hereto attached, and by reference made a part hereof.

2. That for a particular description of the lots and parcels of land bearing the respective reassessment numbers set forth in said unpaid list and upon which reassessments remain unpaid, severally and respectively, reference is hereby made to the reassessment and to the diagram contained in the Engineer's Report, as reviewed and approved September 28, 1988, on file in the office of the City Clerk, as confirmed by said Council, the several lots or parcels of land represented by said reassessment numbers being so numbered and designated upon said diagram and reassessment as so confirmed, severally and respectively.

3. The unpaid list is in the amount of \$485,000.00, and refunding bonds shall be issued upon the security of said unpaid reassessments in said amount and in accordance with the provisions of the Act, and under and pursuant to the provisions of said Resolution No. 88-134 and the proceedings thereunder duly had and taken; the bonds shall be designated, "Limited Obligation Refunding Improvement Bonds, Turner Road and Cluff Avenue Assessment District No. 1, City of Lodi, California, Bond Series 1988-1 (Reassessment and Refunding of 1988)," and in all respects not specified in this resolution, shall be issued in the manner prescribed by the Act. The bonds shall be in fully registered form only and shall not be de-registerable, shall be numbered in sequence, shall be dated October 12, 1988, shall be in denominations of \$5,000 or integral multiples thereof, and their respective interest rates and dates of maturity are as shown in Exhibit B, hereto attached, and incorporated herein by reference. The bonds shall bear interest from October 12, 1988, which shall be payable semi-annually on the second day of March and September in each year, except that the first interest shall be payable on the second day of March, 1990.

4. Said bonds shall be issued in series, and the unpaid assessments as shown on said list filed with the Director of Finance of said City and determined by said Council, together with the interest thereon, shall remain and constitute a trust fund for the redemption and payment of the refunding bonds and of the interest which may be due thereon, which unpaid reassessments shall be payable in annual series corresponding to the number of series of bonds issued, and an annual proportion of each assessment shall be payable in each year preceding the date of maturity for each of the several bonds issued, and such proportion of each reassessment coming due in any year, together with the annual interest thereon, shall in turn be payable in installments as the general taxes of said City on real property are taxable, and shall become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties for delinquency. There shall be included in each annual installment of principal and interest on the bonds issued to represent unpaid reassessments a maximum amount of two percent (2%) of the installment to reimburse the City for the cost of administration and collection of such annual installments and the registration, administration and payment of the bonds issued or the reserve or any related funds.

5. The City Council has determined that the City will not obligate itself to advance available funds from the City Treasury to cure any deficiency which may occur in the bond redemption fund. Such determination shall not prevent the City, in its sole discretion, from so advancing funds.

6. The bonds may be redeemed and paid in advance of maturity upon the second day of March or September in any year by giving at least 30 days notice by registered or certified mail or by personal service to the registered owner at the applicable address shown on the registration books of the registrar by paying principal and accrued interest together with a premium equal to three percent (3%) of the principal.

7. The City Council covenants with the holders of said bonds to be issued herein that it will, within one hundred fifty (150) days following the due date of any delinquent installment of reassessments securing the bonds, commence and thereafter diligently prosecute to completion a foreclosure action regarding such delinquent installment of reassessment.

The City further covenants that it shall neither take, nor permit to be taken, any action which would jeopardize the tax exempt status of the bonds under section 148 of the Internal Revenue Code of 1986, and regulations thereunder, in effect on the date of this resolution, and will take all reasonable actions required to maintain the status of the bonds as exempt from federal income taxes and California personal income taxes.

8. The Director of Finance shall establish and maintain the following funds for administering the proceeds of the sale of refunding bonds, the reassessments to be collected, and payment of principal and interest on the bonds: (1) a Refunding Escrow fund, (2) a Cost of Issuance Fund, (3) a Redemption Fund for the refunding bonds, (4) a Special Reserve Fund as additional security for the payment of the bonds as provided in Part 16 of the Improvement Bond Act of 1915, (5) an Investment Earnings Fund, and (6) an Excess Investment Earnings Fund.

9. The Director of Finance is hereby authorized to execute an appropriate escrow agreement to be entered into between the City of Lodi and the escrow bank.

10. Refunding Escrow Fund. All proceeds of sale of the refunding bonds (excepting the sum of \$33,950 for the special reserve fund on the refunding bonds, and the sum of \$14,550 bond discount), together with the sum of \$74,000.00 from the construction fund, the sum of \$124,390.00 from the redemption fund and the sum of \$101,710.00 from the special reserve fund, all established for the Prior Bonds, shall be deposited in the Refunding Escrow Fund, to be held by the Bank of America N. T. & S. A. as escrow bank, as security for payment of the Prior Bonds. The Director of Finance is hereby authorized to pay to the escrow bank for deposit into the Refunding Escrow Fund the sums hereinabove set forth from the construction fund, the redemption fund, and the special reserve fund, all established for the Prior Bonds. Disbursements from the Refunding Escrow Fund for the redemption of the Prior Bonds shall be made by the escrow bank in accordance with the Engineer's Report for these proceedings and the terms and conditions of the escrow agreement between the City and the escrow bank respecting the refunding bonds.

11. Cost of Issuance Fund. The sum of \$33,650.00 from the redemption fund established for the prior bonds, shall be deposited in the Cost of Issuance Fund to cover the cost of issuing the refunding bonds as shown in the Engineer's Report, either by direct transfer or by transfer from the appropriate existing fund into the cost of issuance fund.

12. Redemption Fund. The Redemption Fund shall be held by the Director of Finance for payment of the refunding bonds at maturity, or at redemption prior to maturity, and all interest on the bonds shall be paid from the redemption fund. All payments of principal and interest installments, including prepaid installments and premiums, if any, collected on the reassessments, together with penalties, if any, shall be deposited in the Redemption Fund, which shall be a trust fund for the benefit of the bondholders of the refunding bonds.

13. Special Reserve Fund. There shall be deposited into the Special Reserve Fund the amount of \$33,950.00 from the proceeds of sale of the refunding bonds, representing seven percent (7%) of the face amount of the refunding bonds issued, in accordance with the terms of the offer to purchase said bonds dated September 21, 1988, by Wulff, Hansen & Co., the purchaser of said bonds, on file with the City Clerk, to which reference is made for further particulars, and the fund shall be administered as follows:

- (a) If any assessment is prepaid before final maturity of the bonds, the amount of principal which the assessee is required to prepay shall be reduced by an amount which is in the same ratio to the original amount of the Special Reserve Fund as

the original amount of the assessment being prepaid bears to the total amount of assessments originally levied in the proceedings, together with its pro rata share of the interest earned on said amount of the Special Reserve Fund. This reduction in the amount of principal prepaid shall be balanced by a transfer from the Special Reserve Fund to the Redemption Fund in the same amount.

(b) The amounts on deposit in this fund shall never exceed 10% of the proceeds of the bond issue.

(c) When the amount in this fund equals or exceeds the amount required to retire the remaining unmatured bonds (whether by advance retirement or otherwise), the amount of the Special Reserve Fund shall be transferred to the Redemption Fund, and the remaining installments of principal and interest not yet due from assessed property owners shall be cancelled without payment.

(d) During the term of the bonds, the amount in the Special Reserve Fund shall be available for transfer into the Redemption Fund in accordance with Section 8808 of the Streets and Highways Code. The transfer so advanced shall be reimbursed to the Special Reserve Fund from the proceeds of redemption or sale of the parcel for which payment of delinquent reassessment installments was made from the Special Reserve Fund.

14. Investment Earnings Fund. Amounts available for investment in the Cost of Issuance Fund, Redemption Fund, and Special Reserve Fund shall be invested in accordance with the City's investment policy. The earnings on the investments shall be deposited in the Investment Earnings Fund. On July 1 of each year during the term of the bonds (or at other times as may be required or permitted by regulations of the United States Internal Revenue Service), the Director of Finance shall determine whether any portion of investment earnings must be rebated to the United States pursuant to Section 148 of the United States Internal Revenue Code and regulations adopted thereunder.

(1) Any amounts required to be rebated will be transferred to the Excess Investment Earnings Fund.

(2) The balance will be transferred on a pro rata basis as to earnings on the Cost of Issuance Fund and Redemption Fund to the Redemption Fund to be applied as a refund or credit to the next installment of principal and interest collected from owners of reassessed land.

(3) The balance of the pro rata share of earnings on the Special Reserve Fund shall be transferred to the Special Reserve Fund if the amount so-deposited plus the amount then on deposit in such fund is less than the amount specified in Section 13(c) hereof and, otherwise, shall be transferred to the Redemption Fund.

15. Excess Investment Earnings Fund. Amounts in the Excess Investment Earnings Fund shall be invested in the same manner as amounts in the other funds and shall be held in trust for rebate to the United States at the times required by Section 148 of the United States Internal Revenue Code of 1986, and regulations adopted thereunder.

16. The refunding bonds shall be signed by the City Clerk and Director of Finance of the City, or bear the engraved, printed or lithographed signature of said officers, and the official seal of said City may be affixed to the bonds by printed, lithographed or other reproduction thereof. Said bonds shall be substantially in the form set forth in the Improvement Bond Act of 1915 with appropriate changes in the wording to show that they are issued pursuant to the Refunding Act of 1984 for 1915 Act Improvement Bonds and are payable at the office of the transfer agent, registrar and paying agent of said City, the Bank of America National Trust & Savings Association, Corporate Agency Service Center,

San Francisco, California. The Director of Finance and City Clerk are hereby authorized and directed to execute said bonds.

17. Each of said bonds is transferable only upon the registry book to be maintained by the transfer agent, registrar and paying agent upon surrender of the bond duly endorsed or accompanied by a written instrument of transfer satisfactory to said transfer agent, registrar and paying agent and executed by the registered holder thereof, or by attorney duly authorized in writing, and thereupon one or more new fully registered bonds of authorized denominations and of the same maturity, aggregating the principal amount of the bond surrendered for transfer, shall be issued to the transferee or transferees in exchange therefor, and upon payment of the City's and registrar's reasonable charges, if any, including any tax or governmental charge that may be imposed in connection with such transfer and exchange. No such transfer and exchange shall be required to be made during the 15 days immediately preceding any interest payment date, nor after notification to the registrar of a temporary suspension period pending selection of bonds for call and redemption, nor as to such bonds selected for call and redemption. Bonds so transferred shall bear interest from October 12, 1988, or the date prior to transfer to which interest has been paid, whichever is later.

18. The City shall not take, nor permit nor suffer to be taken by the Director of Finance or otherwise, any action with respect to the gross proceeds of the bonds which if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the closing date of the bond issue would have caused the bonds to be "arbitrage bonds" within the meaning of section 148(e) of the Internal Revenue Code of 1986 (hereafter, the "Code") and regulations issued thereunder (hereafter, the "Regulations").

19. On the basis of the facts, estimates and circumstances now in existence and in existence on the date of issue of the bonds, as determined by the Director of Finance, the Director of Finance is authorized and directed to certify that it is not expected that the proceeds of said issue will be used in a manner that would cause such obligations to be arbitrage bonds. Such certification shall be delivered to the purchaser of the bonds at the time of delivery of and payment for the bonds.

20. The City shall assure that the following limitations, as defined by the Code and the Regulations, shall apply:

A. not in excess of ten percent (10%) of the proceeds of the bonds is used for private business use if, in addition, the payment of the principal of, or the interest on more than ten percent (10%) of the proceeds of the bonds is (under the terms of the bonds or any underlying arrangement) directly or indirectly, (1) secured by any interest in property, or payments in respect of property, used or to be used for a private business use, or (2) to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a private business use; and

B. in the event that in excess of five percent (5%) of the proceeds of the bonds is used for a private business use, and, in addition, the payment of the principal of, or the interest on, more than five percent (5%) of the proceeds of the bonds is (under the terms of the bonds or any underlying arrangement) directly or indirectly, secured by any interest in property, or payments in respect of property, used or to be used for said private business use, or is to be derived from payments (whether or not to the City) in respect of property, or borrowed money, used or to be used for a

private business use, then, (1) said excess over said five percent (5%) of the proceeds of the bonds which is used for private business use shall be used for a private business use related to a government use of such proceeds, and (2) each such private business use over five percent (5%) of the proceeds of the bonds which is related to a government use of such proceeds shall not exceed the amount of such proceeds which is used for the government use of proceeds to which such private business use is related.

21. The City shall assure that not in excess of the lesser of five percent (5%) of the proceeds of the bonds or \$5,000,000 is to be used, directly or indirectly, to make or finance loans (other than loans constituting nonpurpose investments and other than loans which enable the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function) to persons other than state or local government units, as defined in the Code and the Regulations.

22. The City shall not take any action, or permit or suffer any action to be taken if the result of the same would be to cause the bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code and Regulations.

23. Without the consent of the registered owners of the bonds, the City hereafter may amend this resolution to add, modify or delete provisions as may be necessary or appropriate to assure compliance with section 148(f) of the Code or as otherwise may be necessary to assure the exemption of interest on the bonds from federal income taxation.

24. All actions mandated by this resolution to be performed by the Director of Finance may be performed by the designee thereof or such other official of the City or independent contractor, contractor, or trustee, duly authorized by the City Council of the City to perform such action or actions in furtherance of all or a specific portion of the requirements hereof.

25. The City Clerk shall furnish a certified copy of this Resolution to the Director of Finance, to the Bank of America, National Trust and Savings Association, and to the County Auditor.

26. This resolution amends and supersedes Resolution No. 88-143, having the same title and adopted by this Council on October 5, 1988.

DATED: October 19, 1988.

I, ALICE M. REIMCHE, City Clerk of the City of Lodi, do hereby certify that Resolution No. 88-147 was passed and adopted at a regular meeting of the City Council of the City of Lodi, held October 19, 1988, by the following vote:

AYES: Councilmembers - Hinchman, Olson, Snider and Pinkerton (Mayor)

NOES: Councilmembers - None

ABSENT: Councilmembers - Reid

ABSTENTIONS: Councilmembers - None



ALICE M. REIMCHE, City Clerk

LIST OF UNPAID REASSESSMENTS
TURNER ROAD AND CLUFF AVENUE ASSESSMENT DISTRICT NO. 1
(REASSESSMENT AND REFUNDING OF 1988)

<u>Reassessment No.</u>	<u>Description</u> <u>Assessor's Parcel No.</u>	<u>Amount</u>
2	049 020 18	\$5,262.01
5	049 080 26	5,919.72
6	049 080 25	5,919.72
7	049 080 45	52,562.72
8A	049 080 65	32,008.40
8E	049 080 67	20,030.16
8F	049 080 68	3,411.11
8G	049 080 66	19,594.02
9	049 080 50	30,215.19
10	049 080 51	20,731.03
11A	049 080 55	10,535.20
11B	049 080 56	9,787.46
11C	049 080 57	5,124.71
11D	049 080 58	5,565.10
12A	049 080 63	13,764.71
12B	049 080 64	13,764.71
13	049 080 46	11,943.87
14	049 080 47	5,695.25
15	049 030 13	44,431.24
16A	049 040 43	19,079.91
16B	049 040 44	47,700.81
17A	049 020 17 (*Portion only)	4,604.44
17B	049 020 20 (**Portion only)	3,888.20
18	049 020 19	<u>93,460.31</u>
		<u>\$485,000.00</u>

*That portion of APN 049 020 17 lying within Parcel 1 as shown on Parcel Map filed in Book 9 of Parcel Maps, page 216, in the office of the County Recorder of San Joaquin County, as amended by Lot Line Adjustment approved by Resolution No. 82-12 of the Lodi City Council.

**That portion of APN 049 020 20 lying within Parcel 1 as shown on Parcel Map filed in Book 9 of Parcel Maps, page 216, in the office of the County Recorder of San Joaquin County, as amended by Lot Line Adjustment approved by Resolution No. 82-12 of the Lodi City Council.

EXHIBIT A

TURNER ROAD AND CLUFF AVENUE ASSESSMENT DISTRICT NO. 1
(REASSESSMENT AND REFUNDING OF 1988)

REFUNDING BOND MATURITY SCHEDULE

<u>Interest Rate</u>	<u>Annual Amount</u>	<u>Date of Maturity</u>
6.25%	\$65,000.00	September 2, 1990
7.00%	95,000.00	September 2, 1991
7.25%	100,000.00	September 2, 1992
7.40%	110,000.00	September 2, 1993
7.50%	<u>115,000.00</u>	September 2, 1994
Total	\$485,000.00	